(1) 214 12 JAN 27 2003

CASE # 02-15541

D.C. No ev-01-02313-GGH

IN THE

Supreme Court of the United States

DONALD M. BIRD — APPELLANT

v.

GRAY DAVIS
GOVERNOR OF CALIFORNIA
BILL LOCKYER
ATTORNEY GENERAL OF CALIFORNIA — APPELLEES

On Petition For Writ Of Certiorari
To The Ninth Circuit Court of Appeals
San Francisco, California

PETITION FOR WRIT OF CERTIORARI

DONALD M. BIRD
Pro Se
P.O. Box 5313
CORNING, CALIFORNIA 96021
(530) 585-2779

33 pp

QUESTIONS PRESENTED FOR REVIEW

This Appellant has spent every possible argument to convince and persuade this Ninth Circuit Court to support the Appellant's Writ of Mandamus and the Constitution of the United States. The Appellant reluctantly accepts the futility of trying to reason with the Ninth Circuit's (No Decision) when the Appellant filed the Petition for Rehearing. The pompous and overbearing statement they have "No Authority" to make a decision in this case is absolute lunacy. This Appellant is confident he meets the criteria of Rule 10. Based on the U.S. vs. Emerson case, this meets Rule 10, paragraphs (a), (b) and (c). Refer to Rule 10:

1. The Ninth Circuit Court of Appeals failed to produce a decision.
2. The Appellant is absolute in his belief this is a compelling reason for the Supreme Court to review and decide this case.
3. The Ninth Circuit Court of Appeals has departed from its obligations. **(see the Supreme Court past opinions)** The Supreme Court's supervisory power is definitely required in this case.
4. Though not mentioned in any of the Court Rules, the Appellant's case is a "First Impression Case". No other case has been decided in the relief sought by this Appellant. The case has No precedent. Therefore this Court will be required and expected to define "Jurisdiction".

This case is of "imperative public importance" as quoted in Rule 11 and requires immediate determination by this Court. (see 28 u.s.c. § 2101 (e). The undetermined count of law abiding sovereign citizens has a right to demand this Court to affirm our Second Amendment Right. The time is now to define the word "People". The Appellant being of reasonable intelligence understands People and Individual as synonymous.

The Appellant will use this opportunity to reveal his

passionate feelings in a "colloquial" plea rather than in legalese. The Appellant is hopeful the Court Clerks that review this case will decide it is worthy of the Supreme Court's consideration. If this Court finds this case worthy to review in its entirety, the Appellant is positive the Justices will find No Reason to Dismiss The "Writ of Mandamus". This should be the time this Court steps off the Fence. The Writ of Mandamus is asking this Court as was asked of the Ninth Circuit Court to make a very simple decision: That is to Order the Governor of the State of California, Gray Davis and the Attorney General of the State of California, Bill Lockyer to Affirm this right. The Appellant, Donald M. Bird has an "INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS IN THE STATE OF CALIFORNIA". This first impression case is unique in that no matter how many negative precedent arguments cited, it will forever hinge on one fact. Any decision by any Court that conflicts or abuses the Second Amendment is and always will be incorrect. The Justices, in order to be faithful to their oath, the Appellant will be entitled to have the Writ of Mandamus enforced. It is not complicated in any way. When an elected official swears to uphold the "OATH" of office, that individual accepts the Constitution of the United States and the Bill of Rights as it is written and is not privileged to interpret what they believe it to be. If the elected official is unable to understand the wording, that person is not qualified to swear to the Oath. Spoken words mean everything. The Bill of Rights and in particular the Second Amendment is a God given Right. It was NOT given to the "PEOPLE" (INDIVIDUAL) BY ANY HUMAN BEING. This Right for Self Defense was bestowed by the GOD that enlightened and guided the Founding Fathers. Is that fact so difficult to comprehend????

This recent Ninth Circuit Court ruling by Circuit Judges Reinhardt, Rymer, and Silverman once again reveals blatant arrogance and defiance of our Second Amendment.

The Appellant implores this Supreme Court to decide this case for the sake of our Republic. Those of us Sovereign

Citizens of this beloved Republic are becoming increasingly frustrated by the depletion of our basic Rights. It would be prudent in the opinion of this Appellant for this Court to make a supportive decision of this case. If this Republic remains divided on this issue, the results could have very serious consequences. This Appellant as an Individual Sovereign Citizen of this beloved Republic will never peacefully surrender any of his weapons to **anyone-ever!!!!** This Appellant pleads and begs this Court to honor their OATH to Preserve and Protect the Constitution of the United States and order the Ninth Circuit Court of Appeals to Order the Governor and Attorney General of the State of California to Affirm that the Appellant has an "INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS IN THE STATE OF CALIFORNIA".

PARTIES TO THE PROCEEDING BELOW

All parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE STATEMENT
(Rule 29.6)

The appellant is a Soveriegn citizen of the United States of America. The appellant is a resident of the State of California. The appellant is not a member of any corporation and is not himself a corporation.

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PETITION FOR WRIT OF CERTIORARI

The appellant, Donald M. Bird, petitions for a Writ of Certiorari to order the Ninth Circuit Court of Appeals to grant the Writ of Mandamus.

OPINIONS BELOW

The U.S. Supreme Court has stated that "No state legislator or executive or judicial officer can war against Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958).

Any judge who does not comply with his oath to the Constitution and engages in acts in violation of the Supreme Law of the Land. The judge is engaged in acts of treason. Having taken at least two, if not three, oaths of office to support the Constitution of the United States. Any judge who has acted in violation of the Constitution is engaged in an act or acts of treason.

The U.S. Supreme Court, in Scheurer v.

> Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authoriy of the United States."
>
> If a judge does not fully comply with the Constitution, then his orders are void, In re Sawyer, 124 U.S. 200 (1888), he/she is without jurisdiction, and he/she has engaged in an act or acts of treason.

The 14th Amendment to the Constitution plainly and in unduplicitous words makes it irrevocably clear that the right to keep and bear arms is an individual right. 42U.S.C. paragraph 1983, accredits **"to anyone protection for redress, if he is deprived of any rights, privileges... to which he is entitled under the Constitution of the United States."** Negroes had their guns confiscated and successfully sought their remedy under the 14th Amendment. It is difficult to see how remedies could be granted, if no individual right to keep and bear arms existed.

The *Bill of Rights* was drafted for the entire nation. California's "Act of Admission to the Union" provided for this state to enter the Union *"on an equal footing with the original States in all respects whatever"*. By this provision the *Bill of Rights* including the right to arms, became confirmed and applied to all California citizens. The *Bill of Rights* is not repealable.

The California Constitution obligates the legislature to adhere to the principles of *liberty* in Article I Sections 1,2,4, and 7. Liberty is important because it is more than just a right! Liberty is a condition, a state of being, under which sacred endowments are secured, and by which one may exercise his rights and abilities "free from restraints". Liberty is a condition free from infringement and coercion, unhampered by adverse laws written by government officials.

If the condition to exercise a right in a manner "free from restraints" is taken away, *it is liberty that is lost, but not the right itself.* Rights that are endowed to

man by the Creator will always exist. These sacred endowments can never be taken away by our fellow man; however, the use -or- exercise of these endowments can only be prevented or denied by a corrupt government. No government can *take away* these endowed rights per se!

The right to arms is dependent upon *the existence of liberty* in order for it to be exercised. No person can ever *lose* his essential rights, because they are un alienable, *but one can lose, or be denied, liberty.* Liberty is the undergirding energy force that makes possible the actualization of a right.

The *Bill of Rights* has an exclusive and unique power for which there is no equal! The *Bill of Rights* is a palladium which provides inviolability for sacred rights and is still higher law than the first seven articles in the Constitution. The first seven articles were written by the hand of man, but the *Bill of Rights* contains the endowments from the Creator. It is unrepealable! No man can nullify the laws of God! Its sphere of authority is supreme in guarding the rights of the law-abiding people. It is the *American Magna Carta!* No public official can lawfully override, set aside or repeal any of its provisions. The first Ten Amendments (Articles) in the *Bill of Rights* can NOT be superseded by a law in any form, including executive orders, executive agreements, treaties, state or federal pre-emption, etc.

Our sovereignty, our independence, our right to be self-governing, our liberty, our freedom and our right to the pursuit of happiness under a republican formof government are all guarded by the existence of the *SecondAmendment* in the *Bill of Rights.*

Additionally, all of the other nine amendments in the *Bill of Rights*, for their existence, depend upon the existence of the *Second Amendment*. The right is necessarily and apparently absolute! To detrude the *Second Amendment* by use of state pre-emption, is unforgivable!

The Fifth Circuit Court of Appeals U.S. vs. Timothy Emerson - Case No. 99/99-10331--April 5, 2002 - Page 36 of Appendix. See VII of Conclusion, third paragraph. PLEASE READ IT! "We agree with the district court that the Second Amendment protects the right of individuals to privately keep and bear their own firearms that are suitable as individual, personal weapons and are not of the general kind or type excluded by *Miller*, regardless of whether the particular individual is then actually a member of a militia."

The Revolutionary War was not fought for "rights". The founding fathers knew that our rights were inherent. What they fought for was "independence and liberty". Denial of the exercise of our rights is a denial of liberty.

JURISDICTION

The Ninth Circuit Court of Appeaals having made "No Decision", it is now the duty of the Supreme Court to accept jurisdiction. If the appellant is expected to accept the Supreme Court of the United States of America as the final word on all matters brought before the court, the appellant is confident the jurisdiction argument is settled. This is mandated under 28 u.s.c.§1254(1).

STATEMENT OF THE CASE

Honorable Justices of the Supreme Court of the United States of America

This case originated as a Civil Rights infringement against the Appellant's Second Amendment Rights on June 11, 2001. The following is a portion of the Attorney General's response to that filing.

> {Plaintiff herein cannot establish the first prong of the standing requirement because he has not suffered an "injure in fact." That is, Plaintiff has no legally recognized right to bear arms under the Second Amendment to the United States Constitution. Hence even though there already exist statutes that impose conditions on private gun ownership, Plaintiff cannot state a claim under any of them because the Constitution does not provide a private right to bear arms. That is, the Second Amendment secures to the states the right to maintain an armed militia and it is the "states alone [that] stand in the position to show legal injury when this right is infringed." Hickman v. Block, 81 F.3d 98, 102 (9th Cir. 1996.) As a result, the Second Amendment does not protect the possession of a weapon by a private citizen. Id., at p. 101. Because Plaintiff does not have an interest protected by the Second Amendment, he cannot base standing on an existing statute that imposes restrictions

on the private right to own "militia firearms and magazines." A *fortiori,* he cannot base the "injury in fact" standing requirement on a statute that has not yet been enacted.}

In accordance with Rule 20 3.a The Appellant has been denied relief from the Ninth Circuit Court of Appeals. They have stated in the Order they have "No Authority" to grant the Writ of Mandamus. The Writ of Mandamus is directed to California Governor Gray Davis and California Attorney General Bill Lockyer. The Appellant, when advised by the United States District Court for Eastern California that his case was not "Ripe", responded by amending with a Writ of Mandamus on December 18, 2001 (Noted in the Appendix.) The Appellant had only sought two demands. The Governor of California Gray Davis and the Attorney General of California Bill Lockyer affirm that the Appellant does have an Individual Right to Keep and Bear Arms in the State of California and obey their Oath of office to protect and preserve the Constitution of the United States of America. The Appellant's Brief to the Ninth Circuit Court again stated that this Sovereign Citizen has a First Amendment Right to petition his Government for a Grievance. The Appellant can not in any manner discover where when filing a grievance the Appellant is required to have suffered damages or injury to obtain relief. Per Blacks Law Dictionary, the key words are (injustice) and (wrong). The Writ of Mandamus states the remedy for this case very clearly. Hopefully this Court will recognize this.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

It is the demand that this court order the Ninth Circuit Court of Appeals to enforce the Writ of Mandamus against Governor Gray Davis and Attorney General Bill Lockyer to affirm the individual right to keep and bear arms. The reasons as mentioned in this petition over and over are extremely clear.

The Writ of Mandamus is absolutely, positively un-disputable and appellant is entitled to be granted this petition.x

DONALD M. BIRD
Pro-Per
P.O. Box 5313
Corning, California 96021

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONALD M. BIRD)
)
PETITIONER,)
)
VS.)
)
GRAY DAVIS)
(Governor of California),)
BILL LOCKYER (Attorney)
General of California))
)
RESPONDENTS,) PETITION FOR
) MANDAMUS

ORIGINAL
FILED
DEC 18 2001
DISTRICT COURT
CT OF CALIFORNIA
Clerk

The above petitioner, Donald M. Bird moves the Honorable Magistrate Gregory G. Hollows of the United States District Court of the Eastern District of California for a rule on the respondents Gray Davis (Governor of California) and Bill Lockyer (Attorney General of California). The petitioner requests the court to show cause why a mandamus should not be issued commanding the respondents to recant with a public statement and a statement for the record of this court the following: Statements and remarks made in the answer to

the complaint filed against the respondents June 5, 2001. The petitioner shows cause why this court should issue the mandamus. The petitioner declares as a sovereign citizen of the United States of America and a citizen of the State of California. The statements in the respondents response to the petitioner are false and fail to agree to the wording and meaning of the United States Constitution and the Bill of Rights, and in particular the Second Amendment. The petitioner reminds the respondents that they recite an oath when they become an elected public official. The respondents appear to the petitioner to have ignored the oath of office. This request for a Writ of Mandamus is expressly for one reason and one reason only. The petitioner demands the respondents obey the oath and acknowledge the fact and exact true wording of the Second Amendment. It is recognized by the petitioner that the Writ of Mandamus is the ultimate motion a grieved citizen retains to pray for relief. It may be arguable in the prior complaint filed against the respondents, that this petitioner could not show damages of his civil rights. The petitioner maintains that any citizen that usurps, or causes any of the rights of any citizen to be infringed does indeed violate the citizen's constitutional rights. The petitioner acknowledges that this mandamus will not lie to control the respondents Gray Davis or Bill Lockyer in the discharge of their ordinary official duties nor to compel the respondents to perform any act over which they have the right to exercise their judgement or discretion. The petitioner also acknowledges that the respondents cannot be compelled, by Writ of Mandamus to perform a mere ministerial act devolved on them by the laws of the State. However the petitioner takes the unchallengeable position that the respondents must and should be ordered to support, defend and adhere to the United States Constitution as it is written, and interpret *not this said* document whenever it is convenient politically or for personal recognition.

Although the state cannot be sued (which in the opinion of

recent court cases can be successfully argued) there is nothing in the nature of the Governor (Gray Davis) and the Attorney General (Bill Lockyer), which prevents a suit against the person engaged in discharge of his duties. This is fully sustained by the analogy of the doctrine of the Supreme Court of the United States in the case of Marbury vs. Madison.

The better doctrine seems to be, that the Governor is not an exception to the general rule that all public officers may, by mandamus, be compelled to perform an act clearly defined and enjoined by the law, and which is merely ministerial in its nature, and neither involves any discretion, nor leaves any alternative.perform either its legal or constitutional duties. This argument is founded on theory rather than reality. That each of these coordinate departments has duties to perform, in which it is not subject to the controlling, or direction authority of either of the others, must be conceded. But this independence arises not from the grade of the officer performing the duties, but the nature of the authority exercised. Under our system of government, no officer is placed above the restraining authority of the law, which is truly said to be universal in its behests, all paying it homage; the least as feeling its care, and the greatest as not exempt from its power. And it is only where the law has authorized it, that the restraining power of one of these coordinate departments can be brought to operate as a check upon one of the others. The judical power cannot interpose and direct in regard to the performance of an official act which rests in the discretion of any officer, whether executive, legislative or judicial."

(*Pacific Railroad v. Governor, 23 Miss,. 353; Colten v. Ellis, 7 Jones' Law [N.C.], 545; Chamberlain v. Sibley, 4 Min., 309; 7 O.S.R., 372.*)

In the case of *The State of Ohio, ex rel. Lewis Whiteman et al. v.*

Salmon P. Chase, Governor, 5 O.S. Rep., 529, the question, "Whether the Governor can be controlled in his official action by the authority a Writ of Mandamus from the Supreme Court," was presented and discussed for determination.

BARTLEY, C.J., in delivering the opinion of the court, said: "Can the chief executive officer of the State be directed or controlled in his official action by proceedings in Mandamus? It is claimed on the part of the defense, that, in as much as the government is, by the Constitution, divided into the three separate and coordinate departments; the legislative, the executive, and the judicial: and inasmuch as each department has the right to judge of the Constitution and laws for itself, and each officer is responsible for an abuse or usurpation, in the mode pointed out in the Constitution, it necessarily follows, that each department must be supreme within the scope of its powers, and neither subject to the control of the other, for the manner in which it performs, or its failure to perform either its legal or constitutional duties. This argument is founded on theory rather than reality. That each of these coordinate departments has duties to perform, in which it is not subject to the controlling, or direction authority of either of the others, must be conceded. But this undependence arises not from the grade of the officer performing the duties, but the nature of the authority exercised. Under our system of government, no officer is placed above the restraining authority of the law, which is truly said to be universal in its behests, all paying it homage; the least as feeling its care, and the greatest as not exempt from its power. And it is only where the law has authorized it, that the restraining power of one of these cordinate departments can be brought to operate as a check upon one of the others. The judicial power cannot interpose and direct in regard to the performance of an official act which rests in the discretion of any officer, whether executive, legislative or judicial."

In *Marbury v. Madison, 1 Cranch Rep., 170,* Chief Justice MARSHALL said: "It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done, that the propriety, or impropriety of issuing a mandamus is to be determined. The Constitutional provision declaring that 'the supreme executive power of this State shall be vested in the Governor, clothes the Governor with important political powers, in the execution of which he uses his own judgment or discretion and in regard to which his determinations are conclusive. But there is nothing in the nature of the chief executive office of this State, which prevents the performance of some duties merely ministerial being enjoined on the Governor. While the authority of the Governor is supreme in the exercise of his political and executive functions which depend on the exercise of his own judgment or discretion, the authority of the judiciary of the State is supreme in the determination of all legal questions involved in any matter judicially brought before it.

The petitioner (as well as the court should) support the view of the law of Mandamus. It expressly states the Writ shall be grantable where a citizen has a legal right to insist that a certain act shall be done, the performance of which is, by law made the duty of a public officer.

As it was a remedy introduced to prevent disorder from a failure of justice, in pursuance of the principles of the common law, it ought now to be used upon all occasions where the law has established no specific remedy, and where in justice and in good government there ought to be one. If there be a right and no other specific remedy, this writ should not be denied by our courts. It may be stated as a general principle that this writ is only granted for public persons, and to compel the performance of public duties. (*3 Stephens' Nisi Prius, 2291.*) It can be resorted to only in those cases where the matter in dispute, in theory, concerns the public,

and in which the public has an interest. The degree of its importance to the public, is not, however, scrupulously weighed. (*1 Swift's Digest, 564.*) A mandamus gives no right, not even a right of possession, but simply puts a man in a position which will enable him to assert his right, which in some cases he could not do without it.

In order to lay the foundation for issuing a Writ of Mandamus, there must have been a refusal to do that which it is the object of the mandamus to enforce, either in direct terms, or by circumstances distinctly showing an intention in the party not to do the act required. (*3 Stephens' Nisi Prius, 2292. Redfield on Railways, 441. Note5.*)

And although the power to issue a mandamus is not in America regarded as a prerogative power yet the writ so far partakes of the nature of a prerogative writ, that the court has the power to issue or withhold it, according to its discretion. And if issued, it would manifestly be attended with hardship and difficulties, the court may, and even should refuse it. (*Ex-parte Fleming, 4 Hill 581.*)

But this discretion is not an arbitrary one; it is a judicial discretion; and when there is a right, and the law has established no specific remedy, this writ should not be denied. (*The Proprietors of St. Luke's Church c. Slack, 7 Cushing's Rep., 226.*)

However, therefore, the respondents in the exercise of the Supreme Executive Power of the State may, from the inherent nature of the authority in regard to many of the respondents duties, they have a discretion which places them beyond the control of the judicial power, yet in regard to a mere ministerial duty enjoined on them by statute, which might have been devolved on another officer of the state (as of State Senator or Congressman or Assemblyman) and affecting any specific Private Right they maybe made amendable to the

compulsory process of this court of Mandamus.

The petitioner supports the position that the Constitution is the Supreme Law of the United States of America and no court is entitled to support any person, public or private, to abridge this cornerstone of our Republic. If the respondents, Gray Davis and Bill Lockyer, act in a ministerial capacity and they violate any Constitutional Right, they are not exempt from the power of the Writ of Mandamus. Cite case Low vs. Town Georgia 360, People vs. Bissel 19 til 229.

The petitioner states that to simply define and declare what are the Rights of the Citizen is not the only object of Civil Government; and it meets only a part of the wants and needs of a citizenry.

An equally important branch of the civil and criminal juris prudence of a civilized nation is the remedy provided by law for those who have been deprived of their rights. That remedy which comes nearest to restoring to the party that of which has been deprived approaches nearest to a perfect remedy.

In this Petition of Mandamus, the petitioner only seeks acknowledgment of his Second Amendment Rights to keep and Bear Arms as a Private Citizen!

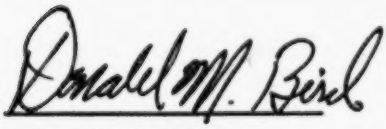
The petitioner has filed with Writ of Mandamus the supporting documentation that gives reason to argue the petitioner would not or could not obtain any relief from this court or any court to obtain the simple admittance from the Respondents.

It is specifically requested from this court to order the respondents to comply with this Petition.

CONCLUSION

This Appellant is asking this Court to reason with logic and common sense. No precedents should be their guide. It is time to recognize they all swear to the identical oath to the one and only Constitution. The Appellant implores and pleads this Supreme Court to put aside pride, ego and political views. The Appellant respectfully requests this Court to accept the Appellant's unorthodox presentation of the Writ of Certiorari. The Appellant offers no excuse or apology for the written arguments/statements as presented. Many others have entered this Court with great hope and expectations. This Appellant feels no different and prays all nine Justices vote to support their oath and will finally accept the true meaning of The Second Amendment.

With Revered Respect,



Donald M. Bird
Appellant, Pro Se
March 21, 2003

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD M. BIRD,

Petitioner, No. CIV s-01-2313 GGH PS

vs.

GRAY DAVIS, et. al.,

Respondents. ORDER

FILED
MAR - 7 2002
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

_____/

[1]

Petitioner filed on December 18, 2001, an action styled Petitioner for Mandamus. He seeks an order from this court directing state defendants to recant statements made in a previous case, No. CIV S-01-1139 MLS GGH PS, which was closed on August 27, 2001: "[t]he petitioner demands the respondents obey the oath [of office] and acknowledge the fact and exact true wording of the Second Amendment." Petition at 1. Defendants motion to dismiss was heard on February 21, 2002.

A federal court is a court of limited jurisdiction, and may adjucate only those cases authorized by the Constitution and by Congress. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377, 114 S. Ct. 1673, 1675 (1994). U.S. Const. Art. III, § 1 provides that the judicial power of the United

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[1] The case is before the undersigned pursuant to 28 U.S.C. § 636(c) (consent to proceed before a magistrate judge).

States is vested in the Supreme Court, "and in such inferior Courts as the Congress may from time to time ordain and establish." Congress therefore confers jurisdiction upon federal district courts, as limited by U.S. Const.l Art. III, § 2. See Ankenbrandt v. Richards, 504 U.S. 689, 697-99, 112 S. Ct. 2206, 2212 (1992). Lack of subject matter jurisdiction may be raised at any time by either party or by the court. See Attorneys Trust v. Videotape Computer Products, Inc., 93 F. 3d 593, 594-95 (9th Cir. 1996).

First of all, the All Writs Act (mandamus) is not an independent source of jurisdiction for the court. There must exist a claim over which the federal court would have jurisdiction, e.g., federal claim, before it can act in mandamus either to compel a federal party to perform a ministerial action, or to otherwise act to preserve its jurisdiction over a validly filed action. Lights of America v. USDC (Central Dist. of Cal.), 130 F.3d 1369, 1370 (9th Cir. 1997). As discussion below, plaintiff has no such federal claim against the state government officials sued.

The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332, confer "federal question" and "diversity" jurisdiction, respectively. Statutes which regulate specific subject matter may also confer federal jurisdiction. See generally, W.W. Schwarzer, A.W. Tashima & J. Wagstaffe, Federal Civil Procedure Before Trial § 2:5. Unless a complaint presents a plausible assertion of a substantial federal right, a federal court does not have jurisdiction. See Bell v. Hood, 327 U.S. 678, 682, 66 S. Ct. 773, 776 (1945). A federal claim which is so insubstantial as to be patently without merit cannot serve as the basis for federal jurisdiction. See Hagans v. Lavine, 415 U.S. 528, 587-38, 94 S. Ct. 1372, 1379-80 (1974). No basis for diversity jurisdiction is demonstrated. Accordingly, the court must determine whether federal question jurisdiction exists.

No federal question jurisdiction exists for petitioner's claim that mandamus lies because he is entitled to have respondents recant statements made in previous litigation.

Cf. Kokkonen, 511 U.S. at 378, 114 S. Ct. at 1675 (enforcing settlement agreement requires own basis for jurisdiction). That something was submitted in a federal court response to which plaintiff takes issue does not raise a federal question. Morever, to the extent that petitioner's real aim is to litigate a potpourri of Second Amendment issues, he neither has standing to litigate those issues, nor has he presented issues which are ripe. See Hickman v. Block, 81 F.3d 98, 102 (9th Cir. 1996) (neither the Second nor the Ninth Amendment to the United States Constitution grants a private right to bear arms); Clinton v. Acequia, Inc. 94 F.3d 568, 572 ("[a] case is not ripe where the existence of the dispute itself hangs on future contingencies that may or may not occur").

Accordingly, IT IS ORDERED that respondents' motion to dismiss is GRANTED. This case is dismissed.

DATED: March_____,2002.

GGH/055:bird2313.mdm.wpd

GREGORY G. HOLLOWS
U. S. MAGISTRATE JUDGE

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDGEMENT IN A CIVIL CASE

DONALD M. BIRD

v. CASE NUMBER CIV S-01-2313 MLS GGH PS

GRAY DAVIS, et al.

FILED
MAR - 7 2002
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

XX -- **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGEMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER OF MARCH 7, 2002.

Jack L. Wagner,
Clerk of the Court

ENTERED: March 7, 2002

by: M. Cannarozzi
N. Cannarozzi, Deputy Clerk

Appendix C

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK
501 "I" STREET
SACRAMENTO, CA 95814

FILED
MAR 19 2002
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

DONALD M. BIRD

Petitioner,

v.

USDC No. CIV.S-01-2313 MLS GGH PS
USCA No.

GRAY DAVIS, et. al.

Respondents.

You are hereby notified that a Notice of Appeal was filed on March 15, 2002 in the above entitled case. Enclosed is a copy of the Notice of Appeal, pursuant to FRAP 3(d).

JACK L. WAGNER, CLERK

MARCH 19, 2002

By: M. Krueger
M. Krueger, Deputy Clerk

CC: COURT OF APPEALS (w/copy of appeal, appealed document, 2 copies of appeal information sheet and docket sheet)

ALL COUNSEL (w/copy of appeal and docket sheet)

APPEAL NOTICE-CIVIL

Appendix D

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK
501 "I" STREET
SACRAMENTO, CA 95814

FILED

MAR 1 9 2002

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY

DONALD M. BIRD

Petitioner,

USDC No. CIV.S-01-2313 MLS GGH PS

v. **USCA No.**

GRAY DAVIS, et. al.

Respondents.

CERTIFICATE OF RECORD

You are hereby notified that the record on appeal in the above entitled case, consisting of the trial transcript (if any) and the trial court clerk's record, is ready for the purposes of the appeal. This record is currently available in the office of the U.S. District Court Clerk. It will be transmitted to the Ninth Circuit upon the direction of the Clerk of the Court of Appeals.

The documents comprising the trial court clerk's record have been numbered in conformance with Rule 11(b) of the Federal Rules of Appellate Procedure.

MARCH 19, 2002

JACK L. WAGNER, CLERK

CC: All Counsel
file

By: _____
M. Krueger, Deputy Clerk

Appendix E

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONALD M. BIRD, Plaintiff and Appellant, v. GRAY DAVIS, Governor of California; et al., Defendants and Appellees.	No. 02-15541 DC# CV-01-02313-GGH MEMORANDUM*

FILED
NOV 22 2002
CATHY A. CATTERSON
CLERK, U.S. COURT OF APPEALS

Appeal from the United States District Court
for the Eastern District of California
Gregory G. Hollows, Magistrate Judge, Presiding**

Submitted November 18, 2002***

Before: REINHARDT, RYMER, and SILVERMAN, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The parties consented in writing to proceed before a magistrate judge.

***This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. O. 34(a)(2). Accordingly, we deny Bird's request for oral argument.

Donald M. Bird appeals pro se the district court's judgment dismissing his action, styled as a petition for a writ of mandamus. Bird requested that the district court order the defendants to recant certain statements they made in a prior lawsuit in state court regarding and individual's right to bear firearms. We have no authority to order the California state governor and attorney general to do so.

AFFIRMED.

Appendix F

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAN - 2 2003
MANDATE ISSUED

NO. 02-15541
CT/AG#: CV-01-02313-GGH

DONALD M. BIRD

Plaintiff - Appellant

v.

GRAY DAVIS, Governor of California; BILL LOCKYER, Attorney General

Defendants - Appellees

APPEAL FROM the United States District Court for the Eastern District of California (Sacramento).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of California (Sacramento) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgement of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered November 22, 2002

Appendix G

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 24 2002

DONALD M. BIRD, Plaintiff and Appellant, v. GRAY DAVIS, Governor of California; et al., Defendants and Appellees.	No. 02-15541 DC# CV-01-02313-GGH Eastern California (Sacramento) ORDERS

Before: REINHARDT, RYMER and SILVERMAN, Circuit Judges

Appellant's petition for panel rehearing is denied.

No further filings shall be accepted in this closed appeal.

Appendix H

02-15541

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DONALD M. BIRD,

Plaintiff and Appellant,

v.

GRAY DAVIS, GOVERNOR OF CALIFORNIA, BILL LOCKYER, ATTORNEY GENERAL OF CALIFORNIA

Defendants and Appellees.

STATEMENT OF RELATED CASES

To the best of our knowledge, no related cases are pending.
Appellees brief May 24, 2002
Case # 02-15541
Ninth Circuit Court of Appeals